

LAW

MESSAGE FROM THE CHAIR

Linnet C. Harlan, Chair

As some of you have noted, in the last two years, the Section has cancelled or postponed programs-the three MCLE and Ski weekend in Lake Tahoe, the first China program and the recent EU program. Since programs are such an important part of the service the Section provides its members, you might like to have a betunderstanding of how and why programs are cancelled or postponed.

The first useful piece of information is that we are always looking for programs our members will find informative and beneficial. At the same time, we on the Executive Committee can only go by our own practices, experiences and gut instincts in deciding which programs might appeal to our members. So a

decision to move forward with a particular program is always an educated guess. Sometimes, as in the case of the MCLE and Ski Weekend, we are wrong. By not signing up for the program by the deadline, our members "voted with their feet" and let us know that this type of program was not something they wanted to attend. We had structured the cancellation with the ski resort so the registered attendees would not be forced to pay a cancellation fee and so the registered attendees would have a month's notice of the cancellation so they could make other plans. But some of our members will still inconvenienced and for that we apologize.

Another piece of useful



information is that sometime events beyond our control influence the cancellation or postponement of a program. This was the case with the China program that was originally scheduled for May, 2003. As the program date approached, the SARS epidemic worsened. The majority of our speakers were to come from China, and they were having a difficult time obtaining visas. Also, even though we knew interest in China was high, very few members registered for the program. Presumably they were concerned about the possi-

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Summer 2004

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Special points of interest:

- Invitation to Annual Meeting Reception
- Empty Seas Seminar: October 1, 2004
- EU Program September 15.

Chair's Message-Continued from Page 1

bility of being in a room with speakers who might carry the SARS virus. After much discussion among the ExCom, we decided to postpone the program until China had the SARS epidemic under control. When the program was held in November, 2003, it was one of the most successful programs we have presented.

We also have been experimenting with co-sponsoring programs with other organizations—as in the program we are co-sponsoring on the European Union with the British American Business Council. benefit of this co-sponsoring is that our speakers have the opportunity to present their expertise to a larger audience and the attendees have the potential for wider networking. The obvious downside is that the more participants in planning a particular program, the greater the potential that something will happen that makes postponing the program more likely. With respect to the EU program, certain technical difficulties arose regarding the presentations of key speakers, including the President of the EU. The BABC felt that postponing the program was necessary, and, given their concerns, we concurred. The program has been rescheduled for September 15.

In no instance does the ExCom readily decide to postpone or cancel a program. There are always a number of factors that we consider, and the ExCom makes a decision to post-

bate. In every instance, we postpone or cancel only when we believe it is the preferred decision given all the circumstances.

Of course, we could always play it safe and present programs only at the Annual Meeting and the Section Education Institutes. While, from time to time, a slotted speaker has had an emergency that required substituting one speaker for another, I do not remember ever canceling a program at those two events.

At the same time, our excellent programs have always been a hallmark of the Section. Speakers want to address the audiences we draw. And the excellent speakers draw interested and lively attendees. For example, the U.S. State Department has specifically requested that we present our program on International Custody Disputes at the Annual Meeting so they can send a speaker. In

pone or cancel only after great de- addition, we will have a speaker from the Iranian Embassy who will provide a perspective not usually available to U.S. audiences. Similar examples occur in our stand-along programs, and we are loathe to deny our members the benefit of these excellent speakers by being too cautious in deciding whether to present stand-alone programs.

> We understand that you are busy, and that potential attendees are inconvenienced when a program is postponed or cancelled. We also believe you, our members, are best served when we balance the possibility of cancellation or postponement against our desire to present outstanding, innovative programs.

Sincerely. Linnet C. Harlan, Chair

You are Cordially Invited $\mathcal{T}o$

The ILS Networking Reception Portola Plaza Hotel Monterey Bay October 8, 2004 5-7 p.m.

Please come and meet other members of the Section. More details are provided in the "Special Events" section on page 6

ENFORCEMENT IN EUROPE: NOW AND IN THE FUTURE

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On May 1, 2004, The European Union (EU) expanded by 10 more countries bringing membership up to 25 and covering a population of 475 Million inhabitants. At present, there are practically no EU-wide enforcement mechanisms in place. An increasing political priority towards more centralized IP systems forces EU countries to work on solutions. The following is a brief overview about what is current and what is to come.

Community Patent Court (CPC) <u>Territories:</u> The entire EU.

- <u>Requirements:</u> A Community Patent under the Community Patent Regulation (CPR).
- <u>Function</u>: The CPC will issue EUwide decisions on infringement and validity of a Community Patent.
- Status: Community Patents can NOT be obtained at present, nor has the CPC been formed yet. A breakthrough was achieved with the "Common Political Approach" dated March 3, 2003 outlining the CPR. At present, the negotiations are tied up again in the translation question and details about the formation of the CPC.
- <u>Prognosis:</u> Likely to come into force, but unlikely before 2010.

European Patent Litigation Agreement (EPLA)

- <u>Territories:</u> Some of the European Patent Convention (EPC) countries, at present the U.K, Germany, France, The Netherlands, Denmark, Sweden, Switzerland, Luxembourg and Monaco.
- <u>Requirements:</u> Requires a European Patent plus validation in the countries where it should be enforced.

- <u>Function</u>: Several regional courts of first instance (EPC1) should be formed, but only one central court of appeal (EPC2) for all EPLA countries. These courts would have exclusive jurisdiction over infringement and validity on patents in any or all of the EPLA countries.
- Status: From the first draft agreement in July 2000, negotiations reached the point that the EPO published a draft agreement in November of 2002. Contrary to the EPLA countries, the European Commission takes the view that the EU member states lost their competence to negotiate the EPLA.
- <u>Prognosis:</u> May never come into force, but if it will not, an alternative solution on EU level is likely in the long run.

European Enforcement Directive

- <u>Territories:</u> Will cover more EU countries after being implemented in the respective national laws, and cover the entire EU within 2 years.
- <u>Requirements:</u> Requires any kind of IP right under national or multinational laws in an EU country.
- <u>Function</u>: Harmonizes national laws in all EU countries towards stronger enforcement, but does NOT provide centralized enforcement mechanisms.
- <u>Status:</u> Passed through the European Parliament on March 9, 2004, obligating the various EU countries to implement this Directive in national laws within the next 2 years.
- <u>Prognosis:</u> The European Enforcement Directive will be implemented in the various national

laws. Delayed countries will be forced by sanctions to implement the Directive in their national laws. However, some delays can usually be expected.

Brussels Convention

- <u>Territories:</u> Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Ireland, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the UK.
- <u>Requirements:</u> Requires Intellectual Property Rights under national or multinational laws in some or all of the Brussels Convention Countries. This Convention covers all types of Intellectual Property rights.
- <u>Function</u>: Among many other enforcement aspects, the Brussels Convention provides that any national court of a member country can issue an injunction also taking effect in other member countries. These other countries should theoretically enforce such cross-border injunctions without questioning it.
- Status: Older treaty that has been in force since September 27, 1968. Temporarily, some courts in various EU countries started issuing cross-border injunctions in the later 90's. Has proven to be ineffective since apart from the issuing country, other countries generally did not enforce these injunctions. Also, the question of validity cannot be effectively addressed.
- <u>Prognosis</u>: Will presumably never lead to a practicable multi-country enforcement mechanism. Therefore, national courts in the EU have basically stopped issuing cross-border injunctions.

CONVERSATION WITH ALBERT GOLBERT

ALBERT GOLBERT, GOLBERT & ASSOCIATES AGOLBERT@AOL.COM

"United States Implications of U.S. Residence and Non-Residence Status", an article authored by Albert Golbert and his wife, Mimi Golbert (an estate planning and taxation lawyer), will be published in the upcoming special issue of the International Practioner, fully devoted to this article. The article addresses the complexity of tax implications of an individual's residence status in the U.S., and it is intended for lawyers and other professionals who represent and advise foreign visitors and immigrants.

Albert, an attorney specializing in international taxation in Los Angles, is one of the founding members of the ILS, and continues to be active as an Advisor Emeritus of the Executive Committee of the ILS. We recently had an opportunity to speak with Albert regarding his experience in authoring the article with his wife and other aspects of being an international practioner.

1. What are the advantages/disadvantages of coauthoring an article with one's spouse?

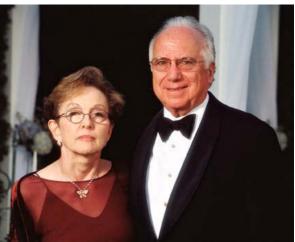
The answer to both questions (advantages and disadvantages) is the same; you know what to expect and what not to expect. For me, the choice was salubrious in that Mimi is both an excellent lawyer and is an excellent writer. After 44 years, there are few if any surprises.

2. What is your concept/definition of being an "international practioner"?

First, I don't confuse it with

a lot of travel to intriguing

and exotic locations. It is the nature of the practice rather than the various temporary locations in which one finds him/herself. Private practitioners do not, as a rule practice in the area of public international law, that is, the law of nations. Our practice, procedurally, is primarily in the area of private international law, or, as it is called domestically, conflict of laws. It is similar to purely domestic law but its topography is different and it has a secondary or even tertiary level of complication resulting from the multiple jurisdictional features of the parties, their performance and the choices of law which present themselves, from domestic to foreign to an arena created by international organizations or multi- or bi-lateral treaties. For Mimi and me, our domestic and international substantive law expertise is tax law. Domestically, we deal with federal law and with state laws which impact our clients. Internationally, we deal with these plus foreign tax laws and bi-lateral income and estate and gift tax treaties which govern tax imposition, collection and withholdings of nationals of one of the high contracting parties to the treaties. Moreover, to the extent one is planning or structuring an offshore invest-



Albert and Mimi Golbert

ment or international joint venture, tax is but one of the many legal issues involved in the project.

3. What are the greatest benefits of being an "international practioner"?

It is an antidote to boredom. I cannot imagine maintaining my interest and enthusiasm for what I do were I involved in any other area of the law.

My practice has also allowed me to live and work in almost every continent, and to meet, know and work with persons as variegated as "Heinz 57" (and by that I mean nothing political).

4. What are the greatest detriments of being an "international practioner"?

Being called at awkward time of day or night by foreign clients who don't know if California is "ahead" or "behind" the caller's local time. Distances also exert pressures and frustrations insofar as today is tomorrow

Continued on Page 5

CONVERSATION WITH ALBERT GOLBERT

"down under" and by the time we receive an enquiry from, say, Paris, our response will not be read or seen until "tomorrow" there.

5. How has being an "international practioner" changed your life?

It has been a broadening experience, and not only in my specialty. The international news is of more immediacy to me than much of what happens in the next or even my own county. I am deeply interested in international trade and commerce issues, economic unions and trade agreements, political developments, especially in Europe,

Asia and the Middle East, as well as in the Western Hemisphere. I feel very much a citizen of planet earth; of the world, as it were, and would like nothing better than to see our world come closer together in peace and friendly competition.

It also gave me the opportunity to teach and to write, and both endeavors give me the greatest pleasure I have known outside my private family life (in which I have also been blessed).

6. Are there things you would have done differently?

Were George Burns to answer this question, he would have said (as, indeed, he did) that had he known he would live so long, he would have taken better care of himself. Had I known that I would have enjoyed my niche so well, I would have worked my way into it sooner, and planned my educational path even earlier than I did. Aside from that, I probably would have done pretty much what I have done were I to be given the opportunity to go back and do it all again.

Mimi Golbert is a partner with Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP

EU CONFERENCE: SEPTEMBER 15, 2004

The ILS and the British American Business Council will present their rescheduled Conference on "Doing Business in the Expanding EU", at the LA Center Studios, at the former UNOCAL building, located at 450 South Bixel Street, adjacent to downtown L.A., on September 15, 2004. The Conference will feature keynote and other Speakers from the international business and law worlds (live or by Satellite), including the Rt. Hon. Lord Mayor of London (a former member of one of London's "magic circle" City law firms), the EU Ambassador to the United States, prominent U.S. and EU lawyers, consular and trade commission officials from various EU countries, international business executives, etc. The Conference will provide an overview of current EU law, practice and business opportunities in the expanding EU, and will include panels on EU law and practice, trade and investment in a number of differing EU countries, film and entertainment opportunities in the EU, and transatlantic litigation and ADR practice. 6.5 hours of MCLE credit will be available for lawyer attendees. Partial credit for the afternoon session may be available, on request.

Please see the flyer at the back of the Newsletter for further information regarding this Conference.

Got An Interesting Story?

ILS Newsletter wants to print your story.

If you are interested in making submission for publication in the ILS Newsletter, please submit your article, write-up and pictures to:

San San Lee Newsletter Editor

UPCOMING EVENTS

"Doing Business in the Expanding EU"

SEPTEMBER 15, 2004

Peter Gelles (310/201-7900 or pag@petergelles.com), John Garman (310/796-7958 or <u>Igarmanllm@cs.com</u>) or Gillian Campbell, BABC-LA Executive Director (310/312-1962 or gillian@babcla.org).

ILS MEMBER RECEPTION

OCTOBER 8, 2004
PORTOLA PLAZA HOTEL, MONTEREY BAY
5:00p.m.-7:00p.m.

EMPTY SEAS: OUR OVERFISHED OCEANS OCTOBER 1, 2004
GOLDEN GATE UNIVERSITY SCHOOL OF LAW 9:00A.M.-4:30P.M.
(SEE FLYER-PAGE 10)

International Bar Association Conference

OCTOBER 24-29

AUCKLAND

http://www.ibanet.org/Auckland/

OTHER INTERNATIONAL ORGANIZATIONS

(PLEASE CHECK THESE WEBSITES FOR EVENTS)

AIJA ~ Association Internationale des Jeunes Avocats (International Association of Young Lawyers): www.aija.org

UIA-Association Internationale des Avocats (International Association of Lawyers): www.uianet.org

IPBA-Inter-Pacific Bar Association: www.ipba.org

IABA-Inter-American Bar Association: www.iaba.org

IBA-International Bar Association: www.ibanet.org

Ross Meador's Adventure to Vietnam

ROSS MEADOR, ROGERS & MEADOR

programs to Vietnamese executives break into the US market. on "Essential Business Methods Currently, one of the most exciting for Exporting to the United States." The invitation was extended by the Vietnamese Chamber of Commerce and Industry (VCCI) a quasi-governmental organization that promotes business and trade throughout the country. Vietnam Resource Group.

were joined by Chris Runkel and Vietnam. Bob Bannerman, who head the Thanks to Ross for sharing these pic-US Commercial Service in Ho Chi tures from Vietnam. Minh City. They provided two

In early April of this year, Ross three-day training programs, one in Ho Meador, an Executive Committee Chi Minh City and the other in Hamember of the ILS was invited by noi. The attendees were serious and to Vietnam to present training hungry for information on how to

business opportunities in Vietnam is in the woodworking and furniture industries. Vietnamese manufacturers are rushing to fill the void as Chinese furniture exports dwindle due to US antidumping petitions. According to Wood & Wood Products magazine, The training was organized by the Vietnam is on its way to becoming a "wood products giant." Ross is help-For the training program, Ross ing with the organization of a delegaand the Vietnam Resources Group tion of US woodworking companies to





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JOIN US!

For those of you who are not yet members, the California International Law Section invites you to join us now. Take advantage of the MCLE programs and the free publications. Take advantage of the opportunities to recommend topics and/;or speakers for Section programs, to contribute articles and/or ideas for articles to Section publications, and to meet with foreign lawyers.

DUES: United States \$60	
Law Students in U.S. \$25	
Outside the U.S. \$90	
Practitioner and admission to Section programs and membership; all interested attorneys, non-attorneys, I	rnia International Law Newsletter, The California International events at discounted prices. There are no prerequisites to aw professors and law students are invited to enroll. For furaw Section administrative staff at the State Bar of California,
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PLEASE SEND THEM TO:

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or

Ravi Mahalingam



The Law Committee of the

British American Business Council





Present

"DOING BUSINESS IN THE EXPANDING EUROPEAN UNION"

at

LOS ANGELES CENTER STUDIOS

450 South Bixel Street · Los Angeles, California 90017

Program 8:00AM - 4:00PM

MCLE CREDIT FOR ATTORNEYS: 6.5 HOURS GENERAL CREDIT

BABC and State Bar of California Members: \$125 • Non-Members: \$195

Wednesday, September 15, 2004

Registration: 7:30 am Breakfast: 8:00 - 9:15 am Luncheon: 1:00 - 2:15 pm

Welcoming Breakfast

- With Consuls General / Trade Representatives from Austria, Britain, Germany, Hungary, Ireland, Netherlands, Poland, Romania and Sweden
- Moderator: Greyson Bryan (O'Melveny & Myers -Los Angeles)

Doing Business in the Expanding EU

- Rt. Hon. Alderman Robert Finch (Lord Mayor of the City of London)
- Guenter Burghardt (EU Ambassador to the US)
- Neil Foster (Morrison & Foerster London)
- Fabio Marazzi (Italy)
- Alan Ryan (Freshfields Bruckhaus Deringer New York)
- Andrew Weiler (White & Case London)
- Moderators: Peter Gelles and John Garman (Los Angeles)

Luncheon with Keynote Speaker John Sharer

(Gibson, Dunn & Crutcher - Los Angeles)
Fellow of the American College of Trial Lawyers
Fellow of the International Academy of Trial Lawyers

INTERN.

State Bar of California

W SECTION

EU Litigation / Transatlantic Alternative Dispute Resolution

- Fred Bennett (Quinn, Emanuel, Urquhart, Oliver & Hedges - Los Angeles)
- Elizabeth Birch (ACI London)
- Jonathan Lux (Ince & Co. London)
- Rod Margo (Condon & Forsyth Los Angeles)
- Moderator: Paul Wright (International Mediation & Arbitration Center)

EU / US Media and Entertainment Business Opportunities

- Film Councils from Britain, California, Croatia, Hungary, Ireland, Italy and Spain
- Joanne Lucchesi (HSBC Private Bank Los Angeles)
- Moderators: Arnold Peter and Cherie Raidy (Lord Bissell Brook – Los Angeles)

Yes, I would like to attend	☐ State Bar Member ☐ BABC Member
I enclose my check/credit card details for \$	(\$125 members & \$195 non-members)
VS/MC/AE#	Expiration
Name	Company/Firm
Address	
City	Zip
Phone	Email

Please Send Reservation Request To: BABC, 11766 WILSHIRE BOULEVARD, SUITE 1230, LOS ANGELES, CA 90025 www.babcla.org · Email: info@babcla.org

Golden Gate University School of Law and Golden Gate University Law Review Present a Law and Policy Symposium

Empty Seas:

Our Overfished Oceans

Friday, October 1, 2004

9 am to 4:30 pm (registration at 8:30)

Golden Gate University School of Law 536 Mission Street (between 1st and 2nd Streets), San Francisco

Panels:

Panel No. 1: 1996 Magnuson Act Considered

Paul Sandifer, U.S. Commission on Ocean Policy Drew Capputo, Natural Resources Defense Council Jannis Searles, Oceana

Margaret Spring, U.S. Senate Fisheries Subcommittee

Zeke Grader, Pacific Coast Federation of Fishermen's Associations

Panel No. 2: Fisheries Trade Considered

Sonja Fordham, The Ocean Conservancy

Marcos Orrellana, Center for International Environmental Law

Lalaina Rakotoson, Development and Environmental Law Centre-Madagascar

Mark Linscott, U.S. Trade Representative's Office

Panel No. 3: Global Fisheries Governance Considered

Deirdre Warner-Kramer, U.S. State Department

Tim Eichenberg, Attorney/Consultant

Montserrat Gorina-Ysern, Conservation International

Cosponsored by:

- · Environmental Law Section, California State Bar
- · International Law Section, California State Bar
- · Environmental Law Section, Bar Association of San Francisco
 - · Center for International Environmental Law
 - The Ocean Conservancy
 - Oceana
 - · Natural Resources Defense Council
 - Conservation Interational
 - · Pacific Coast Federation of Fishermen's Associations

Cost:

Registration Fee: \$30 (no MCLE credit) \$60 (5 units of MCLE)

Students: FREE

To pre-register, contact:

Lorri Ungaretti: (415) 442-6636 or lungaretti@ggu.edu

For program information, contact one of the symposium co-directors:

Paul Kibel: (510) 419-2235 or pkibel@fablaw.com Tim Eichenberg: (415) 386-8127 or timeichenberg@yahoo.com

GOLDEN GATE UNIVERSITY

School of Law

Website: www.ggu.edu/law

The Empty Seas symposium is supported by a grant from the As You Sow Foundation.

Golden Gate University School of Law is a State Bar of California approved provider.

Golden Gate University certifies that this activity has been approved for MCLE credit by the State Bar of California in the amount of 5 hours.

The International Law Section will be offering the following courses at the

STATE BAR ANNUAL MEETING

in Monterey, CA from October 7-10, 2004

Program 19 Building the Cross-Border Construction Contract	Program 19	Building the	Cross-Border	Construction	Contract
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Program 190 Cross-Border Adoption

Program 28 Cross-Border Estate Planning

Program 36 Cross-Border Labor and Employment Law, Including Immigration Issues

Program 56 Dealing with Cross-Cultural Drinking Expectation

Program 163 Doing Business Across the Border, Down Mexico Way

Program 41 Facing Up to Cultural Diversity: Becoming a More Effective Lawyer

Program 206 Finding and Collecting Assets in Foreign Jurisdictions

Program 136 Intellectual Property Rights Abroad: How to Obtain, Maintain, and Defend Them

Program 98 International Child Abduction

Program 27 Negotiating the Cross-Border Acquisition Agreement

Program 137 A Trillion Dollars a Day: The Law of Cross-Border Wire Transfers and Electronic Payments

The International Law Section would like to invite attendees of the STATE BAR OF CALIFORNIA ANNUAL MEETING to their International Law Section Reception

Friday, October 8, 2004 5 to 7 p.m. Portola Plaza, Monterey Bay Monterey, CA The International Law Section of the State Bar of California and UCLA School of Law announce a program to be held at UCLA concerning

ALIEN TORT STATUTE LITIGATION

October 28, 2004

3:00-5:30 pm

This Program will address the current status and scope of the Alien Tort Statute, which allows foreign plaintiffs to claim against U.S. defendants in U.S. Courts for torts committed outside the U.S. The Program will feature *Paul Hoffman* and *Kristin Myles*, leading practitioners in the currently hot field of ATS litigation, as well as UCLA's *Professor Frances Olsen*, whose research interests include the ATS.

Who Should Attend: Litigators, international practitioners, academics, and law students interested in the current status of ATS and anticipated future developments in ATS litigation.

Where: UCLA School of Law, Room 1430

405 Hilgard Avenue, Los Angeles, CA 90095

Panelists: Paul Hoffman (Los Angeles)

Kristin Myles (San Francisco) Professor Frances Olsen (UCLA) Peter A. Gelles, *Moderator* (Los Angeles)

Price: \$40 (International Law Section members)

\$50 (non-members)

UCLA Students complimentary, with valid ID

MCLE: 2.5 hours of General Credit

Co-sponsored by the State Bar of California's International Law Section and ABA-SILP Human Rights Committee

For more information contact: Tara Robinson 310-201-7900 • pag@petergelles.com

The State Bar of California International Law Section is a State Bar of California MCLE Provider.

Alien Tort Statute Litigation Registration Form

Twee. One registrative per form. Thorocopies may be used.	
Name:	_
Bar Number:	_
Firm:	
Address:	
City, State, Zip:	_
Phone: Fax:	
Email address:	_
Registration Fee:	
☐ International Law Section Members - \$40	
☐ Non-Section Members - \$50	
Amount Enclosed/To Be Charged \$	_
Your form and check, payable to The State Bar of California, or credit card information must	be
received by October 20, 2004. On-site registration is limited and subject to availability.	
Credit Card Information (Visa/MasterCard ONLY)	
I authorize the State Bar of California to charge my program registration to my	
Visa/MasterCard account. (No other credit card will be accepted.)	

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Account Number: _____ Exp. Date: _____

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Cardholder's Signature:

Mail to: Program Registrations, State Bar of California, 180 Howard St., San Francisco, CA 94105

Fax to: Program Registrations at 415-538-2368. In order to fax your registration, credit card information is MANDATORY (Visa or MasterCard only.)

Cancellations/Refunds: Cancellations and requests for refunds must be received in writing by October 20, 2004. Substitute registrants are allowed but must register in their own name at the meeting to receive MCLE credit.

No Confirmation Letter will be sent. You must check in at the Registration Desk before the program.

Special Assistance: For special assistance please call 415-538-2468; for TDD speech and hearing impaired, please call 415-538-2231.

Questions: For registration information please call 415-538-2508. For information regarding the program please call 415-538-2380.

Audio Cassettes: Cassettes will be available for purchase after the program by calling the Versa-Tape Company at 800-468-2737.

INTERNATIONAL LAW SECTION

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